

SETTLEMENT AGREEMENT

WHEREAS, Plaintiffs, the *Rio Grande Sun* (“The Sun”), Andrew Martinez (“Mr. Martinez”), and Ariel Carmona, Jr. (“Mr. Carmona”), commenced an action entitled ***Rio Grande Sun, et al. v. Española Public School District, et al.***, No. D-117-CV-2016-00203, in the First Judicial District Court, County of Rio Arriba, State of New Mexico (the “Action”); and

WHEREAS, Plaintiffs and Defendants Española Public School District (“District”), Myra Martinez and Crystal Garcia (“Defendants”) desire to settle the Action; and

WHEREAS, the parties recognize the needs of the press and the public to obtain information regarding the public schools and to obtain this information in a timely manner subject to the exceptions provided for in the New Mexico Inspection of Public Records Act, NMSA 1978, § 14-2-1 *et. seq.* (“IPRA”);

NOW, THEREFORE, in consideration of the promises and the conditions contained herein, the parties agree as follows:

1. The District shall comply with the terms set forth in this Settlement Agreement.
2. Consistent with the requirement of Section 14-2-8(D) of IPRA that “[a] custodian receiving a written [IPRA] request shall permit the inspection immediately or as soon as is practicable under the circumstances[.]” the District shall not delay the production of any public record that is otherwise available for inspection solely because the full 15-day time limit in Section 14-2-8(D) has not yet expired.
3. If the District elects to withhold a record under the exemption enumerated in NMSA 1978, § 14-2-1(A)(3) for “letters or memorandums which are matters of opinion in personnel files or students’ cumulative files[.]” the District may, consistent with the requirements of Section 14-

2-9(A) of IPRA, redact the information it contends contains matters of opinion and shall produce the remainder of the record in redacted form.

4. Pursuant to NMSA 1978, § 14-2-9(C) the District shall provide the first 10 pages of any copies of public records without charge.

5. The District will provide public records responsive to an IPRA request by email or by use of cloud storage devices whenever practicable.

6. On or before the date this Settlement Agreement is executed, and subject to the conditions set forth in this Settlement Agreement, Defendants shall make available for inspection the following records, which Defendants represent are the only public records responsive to the IPRA requests at issue that Defendants have withheld from Plaintiffs and not previously made available to Plaintiffs for inspection:

- a. Letter dated April 11, 2016, from Richard Martinez to Acting Superintendent Myra Martinez seeking a board hearing, seeking reasons for his discharge from his certified employee (teacher) role with the district and stating his opinions relating to his discharge;
- b. Letter dated February 16, 2016, from Superintendent Bobbie Gutierrez to Jeannette Trujillo placing Ms. Trujillo on paid administrative leave and stating Superintendent Gutierrez' opinions for taking such action (2 pages);
- c. Administrator Evaluation of Jeannette Trujillo, date of observation February 25, 2015 (2 pages);
- d. Administrator Evaluation of Jeannette Trujillo, date of observation March 24, 2014 (2 pages);
- e. Program Director Evaluation of Jeannette Trujillo, date of observation "Full Year Summary" June 24, 2013 (2 pages); and

f. Classified Employee Evaluation Instrument of Jeannette Trujillo, date of observation April 11, 2011 (2 pages).

7. The District shall make the records set forth in Paragraph 6 of this Agreement available for inspection by providing them by email to Plaintiffs' counsel of record.

8. The District may withhold information contained in the records set forth in Paragraph 6 of this Agreement pursuant to the exemption enumerated in NMSA 1978, § 14-2-1(A)(3) for "letters or memorandums which are matters of opinion in personnel files or students' cumulative files[,]" except that the District shall, consistent with the requirements of NMSA 1978, § 14-2-9(A), redact the information it contends is exempt from disclosure under NMSA 1978, § 14-2-1(A)(3) and shall produce the remainder of the record in redacted form.

9. The District agrees that it may not withhold any of the records set forth in Paragraph 6 of this Agreement, or any portion thereof, for any reason other than pursuant to the exemption enumerated in NMSA 1978, § 14-2-1(A)(3), except that the District may redact protected personal identifier information pursuant to NMSA 1978, § 14-2-1(B).

10. Within three (3) days of the date the District makes the records set forth in Paragraph 6 of this Agreement available for inspection, the Plaintiff may move the Court to compel those records by filing either a petition for writ of mandamus, motion for partial summary judgment or motion for judgment on the pleadings. Defendants agree that the only remaining issue would be whether the redacted information is properly withheld from disclosure pursuant to NMSA 1978, § 14-2-1(A)(3) or NMSA 1978, § 14-2-1(B) and will not oppose such a motion on any other grounds (*e.g.*, lack of standing, disputed issues of fact). Defendants shall promptly submit any of the challenged records to the Court for inspection *in camera* to determine whether the information redacted constitutes a matter of opinion properly withheld from disclosure

pursuant to NMSA 1978, § 14-2-1(A)(3). Should Plaintiffs prevail with regard to such a motion, Plaintiffs may apply to the Court for their reasonable attorneys' fees and costs, and Defendants agree to not oppose this application.

11. The District shall adopt all necessary policies and procedures to ensure its compliance with this Agreement.

12. The District shall pay \$47,500 to Plaintiffs within ten (10) days after the execution of this Settlement Agreement.

13. If any Plaintiff prevails in any court action relating to enforcement of this Settlement Agreement, a court may award such Plaintiff's reasonable attorneys' fees and costs.

14. The parties specifically agree that no adequate remedy at law exists for any breach of this Settlement Agreement by the District. The parties stipulate and agree that any court presiding over such action has the power to award injunctive and declaratory relief to enforce the terms of this Settlement Agreement, including specific performance of the terms of this Agreement.

15. Unless Plaintiffs elect to move to compel production of records pursuant to the procedure set forth in Paragraph 10 of this Agreement, Plaintiffs, upon execution of this Settlement Agreement, shall consent to the dismissal of the Action with prejudice, and shall execute a stipulated order of dismissal of the Action.

16. If Plaintiffs elect to move to compel production of records pursuant to the procedure set forth in Paragraph 10 of this Agreement, Plaintiffs, upon execution of this Settlement Agreement, shall consent to the dismissal of all claims and causes of action alleged in this lawsuit with prejudice, except to the extent necessary to complete the procedure set forth in Paragraph 10 of this Agreement, including all necessary appeals from any decision of the District Court.

Plaintiffs shall also consent to execute a stipulated partial dismissal of this cause of action subject to the reservations set forth above.

17. This Settlement Agreement is governed by the laws of the State of New Mexico.

18. The parties warrant and represent that they have completely read the terms of this Settlement Agreement and fully understand the terms of this Agreement and voluntarily accept those terms for the purpose of making a full and final compromise, adjustment and settlement of all claims, disputed or otherwise, on account of the matters and things above mentioned.

19. The provisions of this Settlement Agreement are severable, and if any part of the Settlement Agreement is found to be unenforceable, the other provisions shall remain fully valid and enforceable.

20. This Settlement Agreement may only be modified by a writing executed by the parties.

21. Nothing in this Settlement Agreement limits Plaintiffs' ability to seek additional or other relief under the Inspection of Public Records Act related to any separate request made by Plaintiffs pursuant to that Act in the future, or to challenge any claim by the District under this Agreement that information is exempt from disclosure under the IPRA.

22. The terms, descriptions and definitions set forth in this Settlement Agreement are for the purpose of settling this matter and are without prejudice to any future claim by Plaintiffs that the requirements or definitions of the IPRA are broader than those set forth in this Settlement Agreement and are without prejudice to any future determinations by the Defendants regarding the requirements or definitions of IPRA.

23. Nothing in this Settlement Agreement shall be construed as a waiver or admission on the part of either Plaintiffs or Defendants with regard to the requirements or interpretation of

IPRA.

24. This Settlement Agreement may be signed in counterparts, each of which shall constitute a duplicate original.

ESPAÑOLA PUBLIC SCHOOL DISTRICT

Pablo E. Lujan

Pablo E. Lujan, President of Board of Education

Sept 21, 2016

Date

STATE OF New Mexico

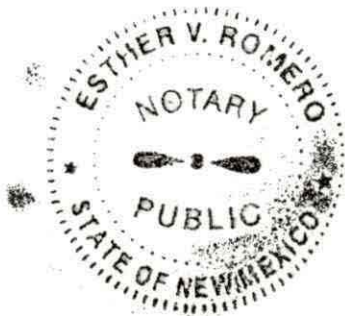
COUNTY OF Rio Arriba

The foregoing instrument was acknowledged before me this 21st day of September 2016 by Pablo E. Lujan.

Esther V. Romero
Notary Public

My commission expires:
REVIEWED AS TO LEGAL SUFFICIENCY:

Geno Zamora
Geno Zamora
Counsel, Board of Education



MYRA L. MARTINEZ

Myra L. Martinez 9/19/16
Myra L. Martinez, Acting Superintendent Date

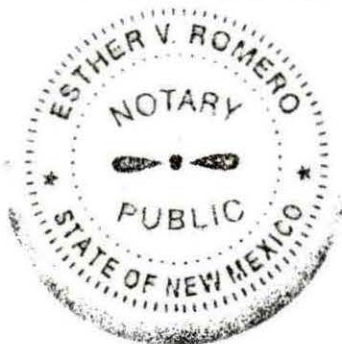
STATE OF New Mexico

COUNTY OF Rio Arriba

The foregoing instrument was acknowledged before me this 19th day of
September by Myra L. Martinez.

Esther V. Romero
Notary Public

My commission expires: 2/7/19
REVIEWED AS TO LEGAL SUFFICIENCY:



Myra L. Martinez
Myra L. Martinez
Acting Superintendent and custodian of records
Española Public School District

CRYSTAL L. GARCIA

Crystal L. Garcia Sept. 19, 16
Crystal L. Garcia, custodian of records Date

STATE OF New Mexico

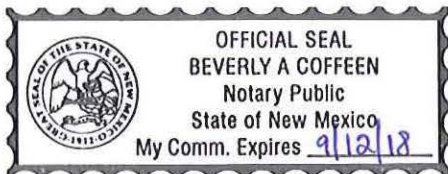
COUNTY OF Rio Arriba

The foregoing instrument was acknowledged before me this 19 day of
Sept. 2016 by Crystal L. Garcia.

Beverly A. Coffeen
Notary Public

My commission expires:

REVIEWED AS TO LEGAL SUFFICIENCY:



Crystal L. Garcia Sept. 19, 16
Crystal L. Martinez Garcia
Human Resources Officer and custodian of records
Española Public School District

RIO GRANDE SUN

Robert B. Trapp
Robert B. Trapp, Publisher

Sept 19, 2016
Date

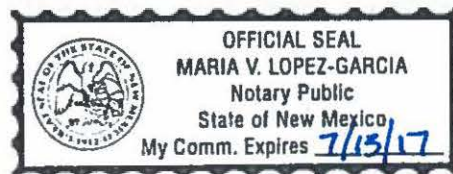
STATE OF New Mexico

COUNTY OF Rio Arriba

The foregoing instrument was acknowledged before me this 19th day of September by Robert B. Trapp.

Maria V. Lopez-Garcia
Notary Public

My commission expires: 7/13/17



ANDREW MARTINEZ

[Signature] 9/19/16
Andrew Martinez, Reporter Date

STATE OF New Mexico

COUNTY OF Rio Arriba

The foregoing instrument was acknowledged before me this 19th day of September by Andrew Martinez.

[Signature]
Notary Public

My commission expires: 7/13/17



ARIEL CARMONA, JR.

Ariel Carmona, Jr. 9/22/16
Ariel Carmona, Jr., former Reporter Date

STATE OF New Mexico

COUNTY OF Rebaca

The foregoing instrument was acknowledged before me this 22 day of
Sept. 2016 by Ariel Carmona, Jr.

Maria G Chavez
Notary Public

My commission expires:

Oct. 21, 2016

